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No. 98-9349

FILED
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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

STEVEN DEWAYNE BOND,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 10, 1999
CERTIORARI GRANTED OCTOBER 12, 1999

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
(El Paso)

Criminal Docket for Case #: 97-CR-682-1

UNITED STATES OF AMERICA

v.

STEVEN DEWAYNE BOND

RELEVANT DOCKET ENTRIES

DATE		PROCEEDINGS
7/17/97	—	Arrest of Steven DeWayne Bond, Jason Michael Wiggs [3:97-m -1550] (rv) [Entry date 07//31/97]
8/6/97	9	Indictment filed against Steven DeWayne Bond, Jason Michael Wiggs Steven DeWayne Bond (1) count(s) 1, 2, Jason Michael Wiggs (2) count(s) 1, 2) (mml) [Entry date 08/07/97]
9/2/97	13	Motion by Steven DeWaye Bond with memorandum in support to suppress evidence (mml) [Entry date 09/03/97]
9/4/97	14	Response by USA to motion by Steven DeWayne Bond, Jason Michael Wiggs: motion to suppress evidence [13-1], motion to suppress evidence [11-1] (mml) [Entry date 09/05/97]
9/18/97	—	Motion hearing for Steven DeWayne Bond, Jason Michael Wiggs held for the following motions: [13-1], [11-1] (mml) [Entry date 09/22/97]

DATE		PROCEEDINGS
9/29/97	16	Supplemental Memorandum by Steven DeWayne Bond in support of motion to suppress evidence [13-1] as to Steven DeWayne Bond (mml) [Entry date 09/30/97]
10/8/97	17	Response brief by USA to motion by Steven DeWayne Bond, Jason Michael Wiggs: motion to suppress evidence [13-1], motion to suppress evidence [11-1] (mml) [Entry date 10/09/97]
10/23/97	18	Order as to Steven DeWayne Bond, Jason Michael Wiggs denying motion to suppress evidence [13-1] as to Steven DeWayne Bond (1), granting motion to suppress evidence [11-1] as to Jason Michael Wiggs (2) (mml) [Entry date 10/23/97]
10/31/97	19	Motion by Steven DeWayne Bond with memorandum in support for reconsideration of motion to suppress (mml) [Entry date 11/03/97]
11/13/97	21	Order as to Steven DeWayne Bond denying motion for reconsideration of motion to suppress [19-1] as to Steven DeWayne Bond (1) (mml) [Entry date 11/14/97]
11/19/97	22	Waiver of jury trial by Steven DeWayne Bond (mml) [Entry date 11/20/97]
11/24/97	—	Bench trial for Steven DeWayne Bond (1) count(s) 1, 2 held (mml) [Entry date 11/25/97]
11/24/97	—	Court verdict as to Steven DeWayne Bond guilty Steven DeWayne Bond (1) count(s) 1, 2 (mml) [Entry date 11/25/97]
1/8/98	—	Sentencing Steven DeWayne Bond (1) count(s) 1, 2 held Steven DeWayne Bond (1) count(s) 1, 2. 57 mos. impr. and assessment of $200.00. 3 yrs. supervised release. Sentence imposed in count 2 to be served concurrecently with that imposed in count 1. ; Mooted Motions: (mml) [Entry date 01/16/98]
1/16/98	26	Judgment and Commitment as to Steven DeWayne Bond (1) count(s) 1, 2) (mml) [Entry date 01/16/98]
1/21/98	—	Notice of appeal and certified copy of docket to USCA: as to Steven DeWayne Bond appeal [27-1] (mml) [Entry date 01/21/98]

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50074

UNITED STATES OF AMERICA

v.

STEVEN DEWAYNE BOND

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
1/23/98		Direct criminal case docket. NOA filed by Appellant Steven Dewayne Bond. [98-50074] (jca)
7/10/98		Appellant's Brief filed by Appellant Steven Dewayne Bond. Copies of brief: 7 # of pages: 22. Date of COS: 7/8/98 Sufficient [Y/N]: Y. [98-50074] A/Pet's Brief ddl satisfied. E/Res's Brief due on 8/10/98 for USA. (sep)
7/10/98		Record excerpts filed by Appellant Steven Dewayne Bond # of copies: 4 Sufficient [Y/N]: Y. [98-50074] (sep)
8/12/98		Appellee's Brief filed by Appellee USA. Copies of Brief: 7 # of pages: 24. Date of COS: 8/10/98 Sufficient [Y/N]: y. [98-50074] E/Res's Brief ddl satisfied. Reply Brief due on 8/26/98 for Steven Dewayne Bond. (trm)
9/4/98		Reply brief filed by Appellant Steven Dewayne Bond. Copies of Brief: 7 # of pages: 22. Word count: 4779 Date of COS: 9/2/98 Sufficient [Y/N] : y. . [98-50074] Reply Brief ddl satisfied. (trm)

DATE	NO.	PROCEEDINGS
1/6/99		Oral arguument heard. Case argued by M Carolyn Fuentes for Appellant Steven Dewayne Bond, Margaret Feuille Leachman for Appellee USA [98-50074] (vlb)
2/8/99		Opinion filed. Issd in T form? Y Issue Mandate due on 3/1/99. [98-50074] (rmf)
2/8/99		Judgment entered and filed. [98-50074] (rmf)
10/18/99		Supreme Court order received granting petition certiorari [1298941-1] by Appellant Steven Dewayne Bond on 10/12/99. [98-50074] (rff)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

No. EP-97-CR-682-H

UNITED STATES OF AMERICA

v.

STEVEN DEWAYNE BOND

TRANSCRIPT OF MOTION TO SUPPRESS HEARING OF SEPTEMBER 18, 1997

[Excerpts from Testimony of Agent Cesar Cantu, Jr.]

* * * *

[2] DIRECT EXAMINATION

BY MR. NICHOLS:

Q. State your name, please.
A. My name is Cesar Cantu, Jr.
Q. How are you employed?
A. I'm employed by the United States Border Patrol.
[3] Q. Were you working as a Border Patrol agent on July 17, 1997 at the Sierra Blanca checkpoint?
A. Yes, sir, I was.
Q. What were your duties that day, sir?
A. To conduct checkpoint operations at the established checkpoint.
Q. What do those duties include?
A. Those duties include checking all eastbound traffic coming in through the checkpoint.

Q. Did the traffic coming from the west on July 17th, 1997, entering the checkpoint include a Greyhound bus?
A. Yes, sir, it did.
Q. Where did the bus come from?
A. El Paso, Texas.
Q. Are buses routinely inspected when they enter the Sierra Blanca checkpoint?
A. Yes, sir, they are.
Q. What does Border Patrol do with the buses, they inspect them right there as they enter the checkpoint or put them somewhere else?
A. As traffic is coming off I-10, there is cones established to separate a primary lane and a secondary lane. The primary lane, there is a break in the cones, and all buses automatically take that lane off to the right, and pull off into the secondary area where we can board the buses.
[4] Q. Is there a reason why the buses are pulled over to that point in the checkpoint?
A. Yes, sir, to conduct an immigration inspection of the passengers on the bus.
Q. And is there a traffic reason that you take the buses out of the lane and put them there?
A. Yes, sir, being that the bus has a lot of passengers, it would be kind of difficult to hinder traffic if we check it at primary.
Q. Approximately what time on July 17th did the Greyhound bus enter the Sierra Blanca checkpoint?
A. 7:55 p.m., more or less.
Q. I'm sorry. I didn't hear your answer.
A. 7:55 p.m., more or less.
Q. Did you personally conduct an immigration check of the people on the bus?
A. Yes, sir, I did.

Q. Was this done in accordance with the routine you've described, the bus being pulled over to the secondary side?

A. Correct, sir.

Q. Who boarded the bus on that day in order to conduct immigration checks?

A. I did, sir.

Q. Did you have any help or were you alone?

A. I was alone.

[5] Q. Would you tell the judge what you did, please, when you got on the bus?

A. As soon as I boarded the bus, I commenced the immigration inspection of all the passengers on the bus. I worked my way towards the rear of the bus, and once I had completed the immigration inspection, as I was exiting the bus, I conducted an inspection of the overhead luggage on the bus.

Q. Now, we're going to go into details of that in a moment, but let me ask you this. Would it not be possible also just to ask everybody to get off the bus and conduct the immigration check in the checkpoint?

A. Could it be possible?

Q. Couldn't you do that?

A. We prefer not to do that. But, yeah, we could.

Q. Why do you prefer not to do that?

A. Because of the safety of the passengers on the bus, crossing the primary inspection area there. It would be more time consuming for them.

Q. Is it also more convenient for the passengers to stay on the bus?

A. Yes, sir.

Q. Are immigration checks conducted in all kinds of weather at that checkpoint?

A. Correct, sir.

[6] Q. Okay. Let's talk about the particular checks that you did. When you ran the immigration checks of the Greyhound bus on July 17th, 1997, by the time you made your way to the back of the bus, were you satisfied that everyone was lawfully in the United States that was on that bus?

A. Correct.

Q. What did you do on the way out? Was there a door on the back of the bus?

A. No, sir.

Q. Did you have to go out the same door you came in?

A. Correct.

Q. What did you do along your route of retreat, as it were, toward the front of the bus?

A. As we're working our way towards the front of the bus, we conduct an inspection of the overhead luggage by squeezing the bags as we're going out.

Q. Are these closed compartments like on an airliner, or are they open?

A. There are some that are closed and some that are open.

Q. What kind of overhead luggage compartments were on this bus?

A. I don't recall, sir.

Q. Okay. So as you made your way to the front, did you see—

THE COURT: Hold up there just a minute. I don't [7] understand that answer. You don't remember whether it was a closed compartment or whether it was just open?

THE WITNESS: Correct, sir.

THE COURT: If it were a closed compartment, do you require that all of them be opened so you can go along feeling of bags?

THE WITNESS: If they are closed, yes, sir.

THE COURT: Who does that?
THE WITNESS: I do that.
THE COURT: You open them yourself?
THE WITNESS: Right.
THE COURT: You don't recall if you did that this day?
THE WITNESS: No, sir, I don't.
THE COURT: Go ahead.
Q. Compared with a man of average height, standing, where would the—how high would the luggage bins be?
A. Oh, about five and a half feet.
Q. Okay. Are you a person of average build?
A. I consider myself, yes, sir.
Q. Where did the luggage bins come to on you when you're standing in the bus?
A. About eye level.
Q. Okay. On your way out did you notice anything unusual or interesting to you in the luggage bin?
[8] A. As I was working my way out, I felt a green bag that I could feel a brick-like object in it.
Q. You were feeling bags on your way out, sir?
A. Correct.
Q. Were you opening the bags?
A. No, sir.
Q. Who was seated underneath the green bag that you've just described, if you remember?
A. The subjects Bond and Wiggs.
Q. Were they seated together?
A. Correct.
Q. Do you see them in court today?
A. Yes, I do.
Q. Would you point them out, please, and identify each?
A. They are the gentlemen with the black T-shirts, blond, and the man with the short hair and the scar on his head.

Q. Do you remember which is which?
A. Yes, sir, Bond is the gentleman with the light brown hair and the other one is Mr. Wiggs.
Q. And what does Mr. Wiggs look like?
A. Mr. Wiggs has a scar over his forehead.
MR. NICHOLS: Your Honor, may the record reflect the witness has identified the defendants?
THE COURT: I can't even see them, so I have no idea.
[9] MR. STANTON: Stand up.
THE COURT: Is that Mr. Wiggs?
THE WITNESS: Correct, sir.
MR. NICHOLS: May the record so reflect, your Honor?
THE COURT: Yes.
MR. NICHOLS: Thank you.
Q. When you felt the green bag over Mr. Bond and Mr. Wiggs, did you seem to feel anything in it?
A. Yes, sir, I did.
Q. What did you feel?
A. Brick-like object in it that, when squeezed, you could feel an outline of something of different mass inside of it.
Q. As a Border Patrol agent are you expected to look for contraband, drugs, if you find them?
A. Yes, sir, we are.
Q. Have you in your training and experience been aware of any passengers on buses carrying drugs in the overhead?
A. Yes, sir, numerous times.
Q. Have you personally conducted seizures of contraband from the overheads in buses entering the checkpoint?
A. Yes, sir, I have.
Q. The Sierra Blanca checkpoint?
A. Correct, sir.

Q. Have those occurred on few or many occasions?

[10] A. It's been many occasions.

Q. What was there—first of all, would you describe the bag in detail that you saw.

A. It was a green canvas bag, about maybe a foot and a half long by a foot tall, about a foot width.

THE COURT: I can't hear what you're saying. Would you speak up a little bit.

THE WITNESS: About a foot and a half long, a foot in height and a foot in width, more or less.

Q. What was there about the object that you felt that caused you to be interested in it.

A. The object, its shape is what caught my attention, since we do find a lot of narcotics, and they're usually wrapped in brick-shaped objects. That's how they're concealed.

Q. Would you describe in detail what you felt, please, in terms of how it felt and its dimensions?

A. I don't recall the dimensions of the brick itself, but when I felt it I could feel the edges of the brick in the bag.

Q. Okay. What did it feel like? Was it soft, was it hard, was it something in between?

A. It was hard, sir.

Q. Have you made narcotics seizures of bricks previously that were similar to this?

A. Correct, sir.

[11] Q. When you felt the brick-like object in the bag, what did you think it might be?

A. Contraband.

Q. What did you do?

THE COURT: Wait a minute. What do you mean by contraband?

THE WITNESS: Well, narcotics, sir.

THE COURT: You don't mean jewelry or firearms or anything like that?

THE WITNESS: No, sir.

THE COURT: Say what you mean. It will speed things up a lot if you will just answer the question directly. Go ahead.

Q. Once you thought it might be narcotics, what did you do?

A. I questioned the passengers of the bus as to whom the bag belonged to.

Q. Did you question anyone in particular, or did you make a general announcement?

A. I made a general announcement.

Q. What did you say?

A. "Does this bag belong to anybody on board this bus?"

Q. Anyone respond?

A. Yes, sir.

Q. Who?

A. Mr. Bond.

[12] Q. What did he say?

A. He said, "Yeah, that's my bag."

Q. Did you begin to talk with him a little bit?

A. Yes, sir.

Q. During your conversation with Mr. Bond, did you notice anything unusual about his demeanor?

A. Yes, he was becoming nervous as I was approaching him with the bag and talking to him about the bag.

Q. I believe you testified that you previously ascertained that he was lawfully in the United States; is that correct?

A. Correct.

Q. Did you begin to suspect that there was another reason for his nervousness?

A. No, sir.

Q. You had no suspicions as to why he was nervous?

A. At that point I was suspicious that he was nervous because of what—the contents of the bag.

Q. What happened then?

A. I asked him for consent to look inside the bag.

Q. And what did he say?

A. "Go ahead, take a look."

Q. Did you look in it?

A. Yes, sir, I did.

Q. What did you find?

A. Found wrapped inside a pair of pants the brick-shaped [13] object—it was wrapped in tape—that we discovered that it was methamphetamines.

Q. Have you found narcotic bricks concealed inside items of clothing inside a bag like this before?

A. Yes, sir, numerous times.

Q. Is that a common or uncommon method of concealment?

A. That is a very common method.

Q. How did you ascertain that the substance in the brick was methamphetamine?

A. It was taken off the bus into the checkpoint and I conducted a reagents test of the substance.

Q. Was this a presumptive chemical field test?

A. Correct, sir.

Q. What did that test tell you?

A. That it was positive for methamphetamines.

Q. What was the next thing you did?

A. At that point, I reboarded the bus, and continued my inspection.

Q. Okay. Now, was Mr. Bond still on the bus?

A. No, sir.

Q. What became of him?

A He was placed inside the checkpoint.

Q. Okay. Did you take him off the bus at the same time you took the brick out?

A. Right.

* * * *

[30] Q. If somebody claims it that doesn't give you consent to look into it, will you take it off the bus?

A. That depends on the circumstances.

Q. Okay. And again, you don't communicate to any of the passengers the difference between the immigration portion of your inspection and the nonimmigration portion?

A. Correct.

Q. And when you got to the back of this bus, you had completed your immigration portion of the inspection?

A. Correct.

Q. And, of course, the entire bus was being held for the immigration inspection; is that correct?

A. Correct.

Q. And it was continuing—it was also being held by the Border Patrol for the nonimmigration inspection?

A. Correct.

Q. Which started once you got to the back of the bus and worked forward?

A. As I was working my way up, yes.

Q. And that's the way you usually do these inspections on buses?

A. Correct, sir.

Q. Now, when you squeeze the bags, do you squeeze them very hard?

A. Yeah. Yes, sir.

[31] Q. Hard enough to break something inside that might be fragile?

A. I haven't yet, sir.

Q. You haven't yet. How do you know?

A. You can usually tell when something breaks if you're squeezing.

Q. How?

A. You can feel the substance you're squeezing break.

Q. Now, of course, you don't request the consent of any of the passengers when you ask them citizenship and immigration questions.

A. I'm sorry?

Q. You don't tell passengers: You are under no obligation to respond to my questions, but I have some questions relating to immigration I want to ask everybody. You don't say that, do you?

A. No, sir, I don't.

Q. On this particular occasion, were you also looking under the seats for luggage?

A. I'm sorry, sir?

Q. On this occasion were you also looking under seats for luggage?

A. There is—yes, sir.

Q. Did you have to ask passengers to move about to look under the seats?

[32] A. Sometimes.

Q. Now, this brick-shaped object, did it have fairly sharp corners?

A. No, sir.

Q. But it was sort of in a rectangular, square shape?

A. Correct.

Q. Do you know whether pictures of these brick-shaped objects were taken?

A. I believe they were, sir.

Q. Okay.

Q. Now, you are authorized by law and regulation, even though you are Border Patrol, to investigate controlled substances related cases and offenses?

A. Yes, sir, we're cross-designated with the DEA.

Q. Now, are you familiar with a case called United States versus Martinez-Fuerte?

A. I recall some of it, yes.

Q. Are you familiar enough to understand that that is a case that authorizes brief—

THE COURT: Why are you discussing law with the witness, counsel?

MR. MAYNARD: Well, just the agent's subjective good faith or bad faith with respect to detaining a vehicle and inspecting for nonimmigration purposes.

* * * *

[Excerpts from Testimony of Steven DeWayne Bond
September 18, 1997]

[DIRECT EXAMINATION]

* * * *

[60] A. I was seated about maybe five seats from the back of the bus.

Q. Okay. Did you turn around to see him doing these things or just noticed them out of the corner of your eye or how did you notice these things?

A. I was watching him to see how he did it.

Q. What was he doing with the bags, the overhead bags?

A. He was squeezing them and moving them side to side.

Q. Was he shaking any of them?

A. Yes.

Q. Any questions of passengers while he was doing this, if you recall?

A. No.

Q. Okay. Now, did there come a time when he got to your row of seats and in the compartment that had your bag?

A. Excuse me?

Q. Did there come a time when the agent came to your row of seats and your bags?

A. Yes.

Q. Your bag. What happened then?

A. He reached for my bag, and he shook it a little, and squeezed it, and then sniffed it, and then he looked, and he asked me if it was my bag, and I told him yes.

Q. Why did you tell him yes?

A. I didn't think I had a choice.

* * * *

[66] CROSS-EXAMINATION

BY MR. NICHOLS:

Q. Mr. Bond, I suppose for better or worse, July 17, 1997 was a memorable day for you, wasn't it?

A. Yes.

Q. Have you ever ridden on a school bus?

A. Yes.

Q. Have you ever ridden on an airplane, on a commercial airliner?

A. Yes, once.

Q. Would you describe the seats on this particular Greyhound as being more like school buses or like commercial airliners?

A. More like a school bus.

* * * *

[Filed Oct. 23, 1997]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

(Caption Omitted in Printing)

ORDER REGARDING DEFENDANTS' MOTIONS TO SUPPRESS EVIDENCE

Defendants Steven Dewayne Bond and Jason Michael Wiggs are charged in a two-count indictment with conspiring to possess methamphetamine and possession of methamphetamine with intent to distribute it. Both Defendants have filed motions to suppress as evidence all fruits of the search of their personal belongings at the Sierra Blanca checkpoint on July 17, 1997. Both Defendants also move to suppress as evidence the statements or confessions attributed to them following their arrest, contending that there are fruits of the poisonous tree.

The testimony of the witnesses at the evidentiary hearing was in conflict. The Court, in its role as fact finder, has been required to make findings of fact as to exactly what occurred. These findings of fact are reflected in the opinion that follows.

Cesar Cantu is a Border Patrol agent stationed at Sierra Blanca, Texas. On July 17, 1997, he was on duty at the Sierra Blanca checkpoint, a Border Patrol checkpoint located on Interstate 10 approximately 85 miles east of El Paso, Texas. At approximately 7:55 p.m. on that date, a Greyhound bus from El Paso arrived at the checkpoint. Agent Cantu got on the bus to check the citizenship or other status of its occupants. He went row by row

to the back of the bus, and discovered no undocumented aliens. On his way back to the front of the bus, Agent Cantu checked the luggage racks above the heads of the seated passengers. This check was not visual only; on occasion he reached in with his hand and felt the suitcases, clothing bags, backpacks, or other items contained in the luggage rack. Four or five rows from the rear of the bus, Agent Cantu felt a bricklike object in a soft-sided green cloth bag. Based on his experience, he thought the bricklike object might be a package of drugs. He immediately asked to whom the green bag belonged. Defendant Steven Dewayne Bond, who was seated in an aisle seat immediately below the green bag, admitted that the bag was his. Bond also struck Agent Cantu as acting somewhat nervous. Agent Cantu asked Bond for consent to search the bag, and Bond gave his consent. Cantu unzipped the green bag and looked inside. Inside the leg of a pair of pants, he found the bricklike object he had felt. Closer examination revealed an oval mass, wrapped in gray duct tape with rounded corners, six or seven inches long by four or five inches wide. Agent Cantu then asked the passenger in the window seat, Defendant Wiggs, whether he was travelling with Bond. Wiggs said that he was. Cantu then removed a backpack from the luggage rack and asked if it belonged to Wiggs. Wiggs said that it did. Agent Cantu then directed both Bond and Wiggs to get off the bus with the two bags. The two young men were turned over to another Border Patrol agent while Agent Cantu completed his inspection of the bus. At that time, the two young men were taken inside the office for questioning. The bus driver was cleared to leave, and the Greyhound bus proceeded on its way. Agent Cantu came inside the office and confronted the two Defendants. He asked Wiggs for consent to search his backpack, and Wiggs gave it. Inside the backpack was another brick-

like object, similar to the one found in Bond's bag. Some of the contents were field tested, and proved positive for methamphetamine. Each brick weighed approximately 1.3 pounds. Agent Cantu then advised both Defendants of their constitutional rights, and they agreed to answer questions. Defendant Bond did most of the talking. He said he was travelling from California to Little Rock, Arkansas, and was transporting the methamphetamine on behalf of a person named Tony Alvarez whom he knew in California. He was to deliver the methamphetamine to someone at a Holiday Inn motel in Little Rock, return to California, and be paid. He admitted that he knew that the bricks contained methamphetamine. Defendant Wiggs did not do much talking. He mostly nodded assent as Bond did the talking. He said nothing to contradict the story being told by Bond.

Agent Cantu contacted the office of the Drug Enforcement Administration in El Paso, and an agent responded to the checkpoint. He reinterviewed the Defendants, and obtained a similar story. Defendant Bond stated that an acquaintance in Merced, California named Tony Alvarez learned that Bond was travelling to Little Rock to visit relatives. Alvarez requested Bond to transport the methamphetamine for a fee. Bond gave his pager to Tony Alvarez, and the understanding was that Bond would "beep" Tony upon his arrival in Little Rock, Arkansas. This time Defendant Wiggs gave a separate statement, admitting that he was knowingly transporting methamphetamine on behalf of Tony Alvarez. He was present at Bond's residence when the parties agreed to the plan, and he heard all of Alvarez's instructions to Bond. Both Defendants were taken into custody and returned to El Paso where they were later indicted.

There is no question that the initial inspection of the bus by Border Patrol Agent Cantu was legitimate and

routine. Agents of the Border Patrol have the authority within 100 miles of the international boundary to stop vehicles at checkpoints and verify the citizenship and/or legal status of their occupants. 8 U.S.C. § 1357(a)(3). In the course of making that inspection, Agent Cantu was authorized to look in the luggage compartments as well. In the process, he felt the outside of Bond's softside green cloth bag. In doing so, he felt the presence of a solid mass reminiscent of a brick. *See: United States v. Karman*, 849 F.2d 928, 929 (5th Cir. 1988). It is well settled that the minimally intrusive touching of the exterior of a bag located in the luggage compartment of a common carrier is neither a search nor a seizure within the meaning of the Fourth Amendment. *United States v. Lovell*, 849 F.2d 910 (5th Cir. 1988); *United States v. Garcia*, 849 F.2d 917 (5th Cir. 1988). Agent Cantu then asked a question about ownership, and Bond replied that the bag was his. Agent Cantu requested Bond's consent to a search of the bag, and Bond gave it. A search by consent is a well recognized exception to the usual warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The Court finds from a preponderance of the evidence that Bond's consent to the search of his bag was voluntary. *United States v. Hurtado*, 950 F.2d 74 (5th Cir. 1990) (en banc). Although Bond testified at the hearing on his motion to suppress evidence, he did not really contend that his consent was not voluntary. All he could do was to express his belief that Agent Cantu would have obtained a search warrant if he had not consented. Once the brick was found, Agent Cantu had probable cause to arrest Bond.

After the discovery of the drug inside his bag, Bond confessed not once but twice. Both confessions were preceded by the administration of proper warnings concerning his constitutional rights. Bond has shown nothing to

render his post-arrest statements inadmissible. Therefore, his motion to suppress both the methamphetamine and his post-arrest statements must be denied.

The case of Defendant Wiggs is a horse of a different color. The Court finds from the evidence that Wiggs was taken off the Greyhound bus and inside the Border Patrol office before the methamphetamine was discovered inside his backpack. Furthermore, the bus driver was cleared to leave the checkpoint, and the bus was driven away. At that point, Agent Cantu had effected a custodial arrest, which required probable cause. Compare *United States v. Bengivenga*, 845 F.2d 593 (5th Cir. 1988) (en banc), *cert. denied* 488 U.S. 924 (1988). However, Cantu did not possess probable cause to arrest Wiggs. With the departure of the bus, Defendant Wiggs was left stranded at a remote location, a million miles from nowhere, with no company other than his handcuffed friend and the polite but unsympathetic Border Patrolmen. Everything that followed, including his alleged "consent" to the search of his backpack and the post-arrest statements he gave were the product of his illegal arrest. *Brown v. Illinois*, 422 U.S. 590 (1975); *Wong Sun v. United States*, 371 U.S. 471 (1963). Between the time of his arrest and the time of his last confession, there were no intervening events or circumstances which purged the primary taint. Therefore, the motion of Defendant Wiggs to suppress as evidence the methamphetamine found in his backpack and his post-arrest statements must be granted.

It is therefore ORDERED that the motion of Defendant Bond to suppress evidence in the above-styled and numbered cause be, and it is hereby, DENIED.

It is further ORDERED that the motion of Defendant Wiggs to suppress all fruits of the arrest, search and

seizure at the Sierra Blanca checkpoint on July 17, 1997, including any post-arrest statements attibuted to him, be, and it is hereby, GRANTED, and both the methamphetamine and his post-arrest statements be, and they are hereby, SUPPRESSED at evidence against him in his case.

SIGNED AND ENTERED this 23d day of October, 1997.

/s/ Harry Lee Hudspeth
HARRY LEE HUDSPETH
United States District Judge

[Filed Nov. 13, 1997]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

(Caption Omitted in Printing)

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

Defendant Steven Dewayne Bond previously filed a motion to suppress evidence in this case. Through his motion, Bond was seeking to suppress a quantity of methamphetamine and his confession. On October 23, 1997, the Court denied the motion to suppress evidence. Bond has now filed a motion for reconsideration of that order.

In his motion for reconsideration, the Defendant suggests that Border Patrol Agent Cantu violated his Fourth Amendment rights "by detaining the bus in which Defendant . . . was travelling, so that he could perform a suspicionless inspection of the travellers' overhead luggage in the bus?" (Motion to reconsider, page 1). Specifically, the Defendant states that he wants the Court to review "the scope of the official detention *before* Agent Cantu discovered the oval brick to determine whether it was reasonable under the Fourth Amendment . . . ." (Motion to reconsider, page 3).

The undisputed evidence at the hearing on the motion to suppress evidence showed that a Greyhound Bus from El Paso arrived at the Sierra Blanca checkpoint at 7:55 p.m. on July 17, 1997. Border Patrol Agent Cantu got on the bus to check the citizenship or other status of its passengers. He started at the front of the bus and moved

toward the back, questioning the passengers in each row of seats as he came to that row. When Agent Cantu reached the back of the bus, he looked in the bathroom, where some individual could have been hiding. He then turned around and headed for the front of the bus. As he did so, he looked in the luggage storage compartment located above the seats. As he came to the Defendant's row, something about a softsided green cloth bag in the overhead compartment attracted his attention. He touched the outside of the bag, and could feel a bricklike object. Thinking on the basis of his experience that this might be a package of drugs, he began asking questions of the nearby passengers. This led to the discovery of the fact that Defendant Bond was the owner of the bag and was transporting controlled substances.

This brief review of the evidence demonstrates the farfetched nature of the Defendant's new contention. It is apparently the theory of the Defendant that when Border Patrol Agent Cantu reached the back of the bus, he was required by law to jump out the back window or to race to the front of the bus and jump out the door. He did neither, because he was required to do neither. Instead, after briefly questioning all the passengers and looking inside the bathroom, he began to work his way back to the front of the bus. In the course of doing so, he looked in the overhead luggage compartments.[1] Although this process may have delayed Agent Cantu's exit from the bus for a few seconds or even one or two minutes, the delay was trivial and inconsequential. It was certainly not sufficient to convert this minimally intrusive

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[1] The motion to reconsider states as a fact that the luggage compartments were incapable of concealing an undocumented alien. The Court does not recall the testimony that way. Although it might be considered improbable, it was not impossible for an alien to conceal himself or herself in the luggage compartments.

detention of a bus at a fixed checkpoint into something forbidden by the Fourth Amendment. *See: United States v. Bengivenga,* 845 F.2d 593 (5th Cir. 1988) (en banc), *cert. denied* 488 U.S. 924 (1988). It is equally clear that the minimally intrusive touching of the exterior of a bag located in the luggage compartment was neither a search nor a seizure within the meaning of the Fourth Amendment. *United States v. Lovell,* 849 F.2d 910 (5th Cir. 1988); *United States v. Garcia,* 849 F.2d 917 (5th Cir. 1988).

It is therefore ORDERED that the motion of Defendant Bond to reconsider the order denying his motion to suppress evidence be, and it is hereby, DENIED.

SIGNED AND ENTERED this 13th day of November, 1997.

/s/ Harry Lee Hudspeth
HARRY LEE HUDSPETH
United States District Judge

[Filed Jan. 16, 1998]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

(Caption Omitted in Printing)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, STEVEN DEWAYNE BOND, was represented by William Maynard.

The defendant was found guilty on counts 1 and 2 by the Court on November 24, 1997 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
21 U.S.C. 841 and 846	Conspiring to possess with intent to distribute a quantity of methamphetamine	7-17-97	1
21 U.S.C. 841	Possessing with intent to distribute a quantity of methamphetamine	7-17-97	2

As pronounced on January 8, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $200.00, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 16th day of January, 1998

/s/ Harry Lee Hudspeth
HARRY LEE HUDSPETH
United States District Judge

Defendant's SSN: 565-61-2811
Defendant's Date of Birth: 2-13-79
Defendant's address: 7215 Tokay Circle; Winston, Ca 95388

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of fifty-seven (57) months as to count 1 and fifty-seven (57) months as to count 2, sentence of imprisonment imposed in count 2 to be served concurrently with that imposed in count 1.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be committed at F.C.I., Lompoc, California.

RETURN

I have executed this Judgment as follows:

_____

_____

Defendant delivered on _____ to _____ at _____, wth a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to count 1 and three (3) years as to count 2, term of supervised release imposed in count 2 to be served concurrently with that imposed in count 1.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

X If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office for the district in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

X The defendant shall not own or possess a firearm or destructive device.

X The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the U.S. Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate

with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

STATEMENT OF REASONS

The Court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	25
Criminal History Category:	1
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	3 to 5 years
Fine Range:	$10,000.00 to $4,000.000.00
Restitution:	$

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 98-50074

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STEVEN DEWAYNE BOND,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas

Feb. 8, 1999

Before KING, Chief Judge, and DUHE and DEMOSS, Circuit Judges.

DUHE, Circuit Judge:

Drugs were found in Appellant's luggage at a border checkpoint. He appeals the denial of his Motion to Suppress. We affirm.

BACKGROUND

Stephen DeWayne Bond ("Bond") was a passenger on a Greyhound bus that was stopped at the permanent

Border Patrol checkpoint at Sierra Blanca, Texas. Border Patrol Agent Cesar Cantu ("Agent Cantu") diverted the bus into the secondary checkpoint traffic lane to conduct an immigration inspection.

Agent Cantu checked the immigration status of the passengers as he worked his way toward the back of the bus. After he reached the back of the bus and was satisfied that the passengers were lawfully in the United States, Agent Cantu walked back toward the front of the bus. As he did so, he began feeling and squeezing passengers' luggage in the overhead compartments.

As Agent Cantu inspected the luggage in the compartment above Bond's seat, he squeezed a green bag and noticed that the bag contained a "brick-like" object. Bond admitted that the bag was his and consented to its search. While searching the bag, Agent Cantu discovered a "brick" of methamphetamine. After Bond was advised of his *Miranda* rights, Bond admitted that he was transporting the methamphetamine to Little Rock, Arkansas.

Bond was indicted for conspiracy to possess and possession with intent to distribute methamphetamine. Contending that Agent Cantu conducted an illegal search, Bond unsucessfully moved to suppress the methamphetamine and for reconsideration. Bond waived a jury trial and the district court found Bond guilty on both counts of the indictment and sentenced him to 57 months imprisonment. Bond appeals the denial of his motion to suppress.

DISCUSSION

In reviewing a district court's denial of a defendant's motion to suppress, we review factual findings for clear error and conclusions of law *de novo*. *See United States*

v. Carrillo-Morales, 27 F.3d 1054, 1060-61 (5th Cir. 1994). We review the evidence in the light most favorable to the prevailing party. *United States v. Ishmael,* 48 F.3d 850, 853 (5th Cir.1995).

Bond consented to the search of the inside of his bag, therefore, we consider only whether Agent Cantu violated Bond's Fourth Amendment rights prior to Bond's consent to the search. For the following reasons, we conclude that Agent Cantu did not.

I. Whether Squeezing Bond's Luggage Constituted a Search for Fourth Amendment Purposes?

"Government action amounts to a search when it infringes an expectation of privacy that society is prepared to accept as reasonable." *U.S. v. McDonald,* 100 F.3d 1320, 1324 (7th Cir.1996), *cert. denied,* 520 U.S. 1258, 117 S.Ct. 2423, 138 L.Ed.2d 186 (1997) (citing *United States v. Jacobsen,* 466 U.S. 109, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984)). However, "[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." *Katz v. United States,* 389 U.S. 347, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967).

Bond insists that Agent Cantu's manipulation of his bag constituted a search for Fourth Amendment purposes. We disagree. Bond stored his bag in the overhead luggage bin of a Greyhound bus.[1] The bin was a common area of the bus, and it was foreseeable that his bag would be squeezed, moved, and manipulated by others. On common carriers, passengers often handle and manipulate

[1] The record is unclear as to whether the overhead luggage bin was of the open or closed type. Both types of bins are accessible to the general public. Therefore, we conclude that the distinction between open and closed luggage bins is irrelevant for Fourth Amendment purposes.

other passengers' luggage while stowing or retrieving their own luggage. By placing his bag in the overhead bin, Bond knowingly exposed it to the public and, therefore, did not have a reasonable expectaton that his bag would not be handled or manipulated by others.[2] *See McDonald,* 100 F.3d at 1327 (holding that officer's manipulation of bags on the overhead rack of a Greyhound bus was not a search because the defendant "did not have a legitimate expectation that her luggage left in such a place would not be handled by others."); *U.S. v. Guzman,* 75 F.3d 1090, 1095 (6th Cir.1996) (holding that the defendant did not have a reasonable expectation of privacy in the exterior of a bag that he placed on the luggage rack of a Greyhound bus); *United States v. Harvey,* 961 F.2d 1361, 1364 (8th Cir.1992) (stating that "[p]assengers have no objective, reasonable expectation that their luggage will never be moved once placed in an overhead compartment."); *see also United States v. Lovell,* 849 F.2d 910, 915 (5th Cir.1988) (holding that manipulation of the defendant's baggage on an airport baggage carousel was not a search because the defendant did not have a reasonable expectation that the baggage would not be moved or handled); *but see United States v. Nicholson,* 144 F.3d 632, 639 (10th Cir.1998) (holding that the manipulation of luggage stored in an overhead luggage bin was a search within the meaning of the Fourth Amendment).

Conceding that other passengers had access to his bag, Bond contends that Agent Cantu's actions constituted a search because Agent Cantu manipulated his bag in a different way than other passengers would. *See U.S. v.*

[2] We have upheld similar searches in two unpublished opinions. *See United States v. Cook,* 992 F.2d 323, 1993 WL 152244 (5th Cir. 1993); *United States v. Wilson,* 987 F.2d 770, 1993 WL 67230 (5th Cir.1993); *see* 5th Cir. R. 47.5.3.

Nicholson, 144 F.3d 632, 639 (10th Cir.1998) (reasoning that manipulation of the defendant's bag constituted a search because detectives squeezed the bag in a way that revealed more about the bag's contents than manipulation by other passengers may have). We reject this argument. The fact that Agent Cantu's manipulation of Bond's bag was calculated to detect contraband is irrelevant for Fourth Amendment purposes. In *California v. Ciraolo*, 476 U.S. 207, 106 S.Ct. 1809, 1813-14, 90 L.Ed.2d 210 (1986), the Supreme Court held that a defendant who grew marijuana plants in his backyard knowingly exposed those plants to aerial observation. The Court observed that the fact that "the observation from [the] aircraft was directed at identifying the plants and the officers were trained to recognize marijuana [was] irrelevant." *Id.* at 1813. Accordingly, we hold that Agent Cantu's manipulation of Bond's bag was not a search within the meaning of the Fourth Amendment.

II. Whether the Luggage Inspection at the Checkpoint Exceed the Limits Imposed by United States v. Martinez-Fuerte?

Bond insists that the continued detention of the bus and its passengers after the immigration inspection was completed exceeded the strict limits for such inspections set forth by the Supreme Court in *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976). He argues that detentions may last only long enough to ask questions and check citizenship status. *See United States v. Jackson*, 825 F.2d 853, 862 (5th Cir.1987). Noting that the *Martinez-Fuerte* Court forbade further detention without consent or probable cause, Bond maintains that Agent Cantu's luggage inspection occurred after he concluded that all passengers on the bus were lawfully in the United States and was, therefore, impermissible. *See Martinez-Fuerte*, 96 S.Ct. at 3087.

We reject Bond's reading of *Martinez-Fuerte*. In the case at bar, the bus had no rear exit and Agent Cantu inspected the luggage compartment during his return to the front of the bus. There is no evidence that Agent Cantu's inspection of the overhead luggage compartment delayed the bus' departure more than an additional one or two minutes.[3] We do not read *Martinez-Fuerte* to mean that once Agent Cantu reached the back of the bus, he was required to jump out a window or sprint back to the front of the bus and jump out the door. Therefore, we conclude that the trivial delay caused by Agent Cantu's inspection did not violate the strict limits of a border checkpoint stop. *See United States v. Muniz-Melchor*, 894 F.2d 1430, 1432, 1436-37 (5th Cir.1990) (tapping on the side of a truck's propane tank at a checkpoint was permissible even though the driver had already produced valid documentation).

Although Bond concedes that *Martinez-Fuerte* allows a visual inspection of areas that can be seen without a search, he contends that Agent Cantu's inspection was impermissible because it went beyond a visual inspection of the bus. *See Martinez-Guerte*, 96 S.Ct. at 3083 (stating that, in a border checkpoint stop, "[n]either the vehicle nor its occupants are searched, and visual inspection of the vehicle is limited to what can be seen without a search."). We disagree. We have repeatedly permitted checkpoint inspections that were not visual but did not constitute searches. *See, e.g., United States v. Hernandez*, 976 F.2d 929, 930 (5th Cir.1992) (permitting dog sniff at checkpoint); *Muniz-Melchor*, 894 F.2d at 1435-37 (holding that tapping on the side of a truck's propane tank at a checkpoint was permissible). Because Agent Cantu's inspection was not a search, the fact that it was tactile rather than visual did not make it impermissible.

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[3] In fact, the entire stop lasted only between five and ten minutes.

CONCLUSION

We affirm the denial of Bond's motion to suppress.

AFFIRMED.